

1984 S.C. Op. Atty. Gen. 232 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-99, 1984 WL 159906

Office of the Attorney General

State of South Carolina

Opinion No. 84-99

August 13, 1984

*1 Helen T. Zeigler
Special Assistant for Legal Affairs
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Ms. Zeigler:

You have asked our advice as to whether convictions for third offense DUI¹ or driving while suspended after having been adjudicated as an habitual offender² constitute crimes of moral turpitude for purposes of [Article VI, § 8 of the South Carolina Constitution](#). We would advise that such offenses do not constitute crimes of moral turpitude.

[Article VI, § 8](#) provides in pertinent part:

Any officer of the State or its political subdivisions, except members of the Legislative and Judicial Branches, who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

A crime of moral turpitude is defined by the Supreme Court of South Carolina as:

... an act of baseness, vileness or depravity in the private and social duties that a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

[State v. Smith](#), 194 S.C. 247, 259, 9 S.E.2d 584 (1940); see also, [State v. Horton](#), 271 S.C. 413, 238 S.E.2d 263. Not every crime is one involving moral turpitude. [State v. LaBarge](#), 275 S.C. 168, 268 S.E.2d 278 (1980). And the decision does not rest simply upon whether the offense is a felony or misdemeanor. [State v. Horton](#), *supra*. Our Supreme Court has said that a crime of moral turpitude is usually *mala in se*, i.e. 'immoral in itself' as opposed to one which is *mala prohibitum*, prohibited by law. [State v. Horton](#), *supra*.

Based upon this reasoning a number of courts in other jurisdictions have concluded that driving under the influence is not a crime of moral turpitude. [Diamond v. State](#), (Ala.), 268 So.2d 850 (1970); [Traders and General, Ins. Co. v. Russell](#), Tex. Civ. App., 99 S.W.2d 1079 (1936); [Groves v. State](#), 175 Ga. 37, 164 S.E. 822 (1932); [Flowers v. Berton County Beer Bd.](#), (Tenn.), 302 S.W.2d 335 (1957). See also, Volume 27, Words and Phrases, Moral Turpitude, pp. 553, 559. As was said in the [Flowers](#) case, Driving an automobile while under the influence . . . is denounced by the statute. But it is not an act involving moral turpitude.

302 S.W.2d at 339. Language in [Diamond v. State](#), *supra*, is substantially similar. 268 So.2d at 853. In [Diamond](#), the Court reasoned that since public drunkenness had been held in a previous Texas case not to constitute a crime of moral turpitude, driving under the influence was likewise not such an offense. Similarly, public drunkenness has already been expressly held by the South Carolina Supreme Court not to be a crime of moral turpitude. [State v. LaBarge](#), *supra*. Thus, we believe a South Carolina court would also so conclude with respect to the crime of driving under the influence.

*2 In addition, it is clear that driving under suspension or without a license³ is not a crime of moral turpitude. That was the express holding of the Court in State v. LaBarge, *supra*. Moreover, since a conviction for driving while suspended after having been adjudicated as an habitual offender is entirely a statutory offense, *see*, State v. Boles, (W.Va.), 157 S.E.2d 554 (1967), then it is a crime mala prohibita, rather than mala in se and thus cannot be deemed a crime of moral turpitude. State v. Horton, *supra*.

Therefore, while we believe that the foregoing crimes are acts of social irresponsibility, they would not be held to be crimes of moral turpitude.

If we can be of further assistance, please let us know. With kindest personal regards, I remain

Very truly yours,

Robert D. Cook
Executive Assistant for Opinions

Footnotes

1 See, Code of Laws of South Carolina, Sections 56–5–2930, 2940.

2 See, Section 56–1–1100.

3 See, Section 56–1–460.

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